

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BMO HARRIS BANK N.A.,

Plaintiff,

V.

THOMSONS LOGISTICS INC., et al.,

Defendants.

Case No. 1:21-cv-00635-NONE-SAB

ORDER DISREGARDING REQUEST FOR VOLUNTARY DISMISSAL

(ECF No. 8)

FOURTEEN DAY DEADLINE

Plaintiff BMO Harris Bank N.A. filed this action against Defendants Thomsons Logistics Inc. and Rohan Pankkal on April 15, 2021 alleging breach of contract. (ECF No. 1.) On May 10, 2021, Defendants filed an answer to the complaint. (ECF No. 7.) On July 7, 2021, Plaintiff filed a notice of voluntary dismissal dismissing the action without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). (ECF No. 8.)

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Here, Defendants have filed an answer, so Plaintiff cannot voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i).

Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an

1 action without a court order by filing a stipulation of dismissal signed by all parties who have
2 appeared." Fed. R. Civ. P. 41(a)(1)(A)(ii).

3 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
4 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
5 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.
6 Inc., 679 F.2d 143, 145 (9th Cir. 1982). Here, while Plaintiff requests dismissal, there has been
7 no noticed motion. See Local Rule 230. Plaintiff is advised that since this matter seeks to
8 dispose of the action, a motion is required to be noticed before the district judge assigned to this
9 action.

10 Plaintiff's request for voluntary dismissal is defective under Rule 41(a)(1) because it is
11 not a signed stipulation by all parties who have appeared and it is not a motion under Rule
12 41(a)(2). If Plaintiff wishes to dismiss this action, it is required to comply with the procedures
13 set forth in Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion
14 under Rule 41(a)(2).

15 Accordingly, Plaintiff's notice of voluntary dismissal is HEREBY DISREGARDED.
16 Plaintiff shall file a request for dismissal that complies with Rule 41 within **fourteen (14) days**
17 from the date of entry of this order.

18 IT IS SO ORDERED.
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20 Dated: July 7, 2021



UNITED STATES MAGISTRATE JUDGE

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